

REMARKS

A Response to a Notice of Non-Compliant Amendment dated was filed June 24, 2003. That Response included changes rectifying various omissions and corrections identified in the Notice as well as arguments distinguishing the claims over references cited during earlier prosecution.

By paper dated September 11, 2003, the Examiner refused entry of the Response on the ground that the amendments were directed to a non-elected invention. (The extension provisions of 37 C.F.R. § 1.136(a) were expressly noted as being applicable to this reply.)

It is submitted that the position of the Examiner in refusing entry of the earlier Response is erroneous.

The Examiner views original claim 1 as containing a time element requiring the actual physical presence of "loops" before the binder material is applied to the backing. Since the amended claim 1 recites that the binder is to be applied prior to the formation of the loops, the Examiner perceives the amended claim to be drawn to a non-elected invention.

The basis for the Examiner's erroneous conclusion is the recitation in original claim 1 that the binder is to be applied "in the vicinity" of the roots. According to the Examiner, one cannot know the vicinity of the loops until the loops are present.

This construction of the claims to include a time element runs counter to the English language, to common sense, and to the clear teachings of the specification.

One can know the "vicinity" of a member without the member being present. All that is required is knowledge regarding the member's eventual location.

This knowledge is sufficient to specify the locality in which an additional feature is to be provided.

For example, in new housing subdivision under construction, a contractor can locate a mailbox "in the vicinity" of a new dwelling before construction of the dwelling is physically begun. As long as the footprint of the dwelling on the lot is known, a location for the mailbox "in the vicinity" of the dwelling is ascertainable.


The recitation of original claim 1 is directly analogous. The original claim required that the binder be placed "in the vicinity of the root portions of the loops". This language comprehends placing the binder both before or after the root is actually present. At least Figures 2A through 2C the step of binder application (reference character 26) occurs before the stitching step (reference character 32) is performed. Figure 2E illustrates the opposite situation.

Thus, when original claim 1 is amended to specify that the binder is placed "prior to" root formation, the amendment properly limits original claim 1.

The amendment in the Response in the parent should be entered.

It is noted that in the interest of protecting the rights of the assignee a divisional application is being contemporaneously filed.

Respectfully submitted,


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